

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Rates for Interstate Inmate Calling Services)	WC Docket No. 12-375
_____)	

**GLOBAL TEL*LINK CORPORATION RESPONSE TO WRITTEN *EX PARTE*
PRESENTATIONS AND, TO EXTENT NECESSARY, PETITION FOR WAIVER**

Global Tel*Link Corporation (“GTL”),¹ by its attorneys, respectfully submits this response to the written *ex parte* presentations filed with the Federal Communications Commission (“Commission”) on July 13 and 14, 2017 by Martha Wright, *et al.* (the “Petitioners”) in the above-referenced matter addressing the annual reports filed by inmate calling service (“ICS”) providers. In addition, to the extent necessary, GTL also hereby petitions the Commission to grant a waiver of the video visitation component of the annual reporting requirement.²

1. In *Global Tel*Link v. FCC*,³ the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) vacated the video visitation component of the ICS annual reporting requirement finding it was “too attenuated to the Commission’s statutory authority to justify [the] requirement.”⁴ When a court vacates an agency’s rule, the vacatur “restores the

¹ This filing is being submitted by GTL on behalf of itself and its wholly owned subsidiaries that also provide inmate calling services: DSI-ITI, LLC, Public Communications Services, Inc., and Value-Added Communications, Inc.

² 47 C.F.R. § 1.3 (allowing for suspension, amendment, or waiver of Commission rules); *see also* 47 C.F.R. § 64.6060(a)(4) (stating the annual report to be filed by ICS providers should contain “minutes of use, per-minute rates and ancillary service charges for video visitation services”).

³ No. 15-1461, *Global Tel*Link v. FCC*, Opinion (D.C. Cir. June 13, 2017) (“Opinion”).

⁴ Opinion at 34 (“We hold that the video visitation services reporting requirement, 47 C.F.R. § 64.6060(a)(4), is too attenuated to the Commission’s statutory authority to justify this requirement. . . . We therefore vacate the reporting requirement for video visitation services.”).

status quo before the invalid rule took effect, and the agency must initiate another rulemaking proceeding if it would seek to confront the problem anew.”⁵

2. Regardless of when the mandate associated with the Opinion is issued, forcing ICS providers to comply with a requirement that has been deemed unlawful by the D.C. Circuit would be an inefficient use of Commission resources and would impose potentially unnecessary expenses on ICS providers. Courts routinely have upheld an agency’s authority to adopt interim measures to prevent industry disruption after agency rules have been vacated, and such interim measures may remain in effect while the agency conducts any required remand proceedings.⁶ The Commission has the authority to adopt such interim measures without notice and comment, especially when such measures are not new rules, but waivers of existing rules.⁷

3. The Commission’s rules also authorize the Commission to suspend, revoke, amend, or waive a Commission rule for good cause shown.⁸ The Commission may waive a rule where particular facts make strict compliance inconsistent with the public interest, such as considerations of hardship, equity, or more effective implementation of overall policy can be achieved on an individual basis.⁹ The Commission also may grant a waiver when special

⁵ *Environmental Defense v. Leavitt*, 329 F. Supp. 2d 55, 64 (D.D.C. 2004); *see also Action on Smoking & Health v. C.A.B.*, 713 F.2d 795, 797 (D.C. Cir. 1983) (noting that “[t]o vacate, as the parties should well know, means to annul; to cancel or rescind; to declare, to make, or to render, void; to defeat; to deprive of force; to make of no authority or validity; to set aside,” and that vacatur “had the effect of reinstating the rules previously in force”).

⁶ *See, e.g., Mid-Tex Electric Cooperative Inc. v. FERC*, 822 F.2d 1123 (D.C. Cir. 1987); *American Gas Association v. FERC*, 888 F.2d 136 (D.C. Cir. 1989).

⁷ *Bell Operating Companies Joint Petition for Waiver of Computer II Rules*, 10 FCC Rcd 13758, ¶ 27 (1995).

⁸ 47 C.F.R. § 1.3.

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969)).

circumstances warrant a deviation from the general rule and such deviation will serve the public interest.¹⁰

4. Such special circumstances are presented in the instant case in light of the D.C. Circuit Opinion. The Commission should waive compliance with the video visitation reporting requirement pending completion of the D.C. Circuit case.

5. Grant of such a waiver is consistent with Commission action recently approving waivers in two analogous contexts. First, the Commission granted, on its own motion, a waiver of its international traffic and revenue reporting requirements until 60 days after release of a Commission order in its pending rulemaking reviewing whether to retain those requirements.¹¹ The Commission determined temporary waiver of the rule pending conclusion of the rulemaking proceeding was necessary to prevent providers “from incurring potentially unnecessary expenses” in preparation of the report when the Commission was considering eliminating the reporting requirement altogether.¹²

6. Second, the Commission waived compliance with its payphone audit rules pending its review of possible amendments to the rules, including complete elimination of the audit requirement.¹³ The Commission found the waiver was justified to prevent carriers from incurring the expense of complying with the requirement pending the outcome of the rulemaking proceeding.¹⁴

¹⁰ *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

¹¹ *Section 43.62 Reporting Requirements for U.S. Providers of International Services*, 32 FCC Rcd 3765 (2017) (“*International Reporting Waiver Order*”).

¹² *International Reporting Waiver Order* ¶ 3.

¹³ WC Docket No. 17-141, *Modernization of Payphone Compensation Rules*, Notice of Proposed Rulemaking and Order, FCC 17-79 (rel. June 22, 2017) (“*Payphone Waiver Order*”).

¹⁴ *Payphone Waiver Order* ¶ 15.

7. For these same reasons, requiring ICS providers to comply with the video visitation reporting requirement at this time would not serve the public interest. ICS providers previously have not been required to collect or report video visitation data, and should not be required to incur this new (and potentially unnecessary) expense for a requirement already deemed to be unlawful.

Accordingly, and for the above-stated reasons, GTL respectfully requests that the Commission waive the video visitation reporting requirement pending completion of the D.C. Circuit case.

Respectfully submitted,

GLOBAL TEL*LINK CORPORATION

/s/ Chérie R. Kiser

Chérie R. Kiser
Angela F. Collins
CAHILL GORDON & REINDEL LLP
1990 K Street, NW, Suite 950
Washington, DC 20006
(202) 862-8900
ckiser@cahill.com
acollins@cahill.com

Dated: July 18, 2017

Its Attorneys